

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**GARY L. McDUFF, #59934-079,
Defendant.**

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**USDC No. 3:08-CV-0526-L
USCA No. 16-10691**

RECOMMENDATION REGARDING IN FORMA PAUPERIS ON APPEAL

Before the Court is Defendant's July 27, 2016 motion to proceed *in forma pauperis* on appeal [Doc. 69], which was referred to the magistrate judge for findings and a recommendation [Doc. 70]. Upon consideration of the motion, the relevant portions of the record, and the applicable law, it is recommended that Defendant's motion to proceed *in forma pauperis* on appeal be DENIED. It is further recommended that, pursuant to FED. R. APP. P. 24(a) and 28 U.S.C. § 1915(a)(3), the Court certify that Defendant's appeal is not taken in good faith. In light of the Court's entry of a final default judgment [Doc. 40, 41] and orders denying Defendant's Rule 60(b) motion and motion to set aside void judgment [Doc. 51, 59], there are no non-frivolous issues for appeal in this case. *See Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (an appeal is not taken in good faith when it fails to present non-frivolous issues).

Although this appeal should be certified as not taken in good faith under 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a)(3), the plaintiff may challenge this finding by filing a separate motion to proceed *in forma pauperis* on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of the District Court's Order.

The cost of filing a motion to proceed on appeal in the Court of Appeals for the Fifth Circuit

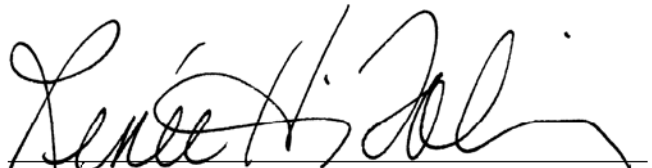
is calculated below, and if the plaintiff moves to proceed on appeal *in forma pauperis*, prison authorities should be directed to collect the fees as calculated in this order pursuant to 28 U.S.C. § 1915(b)(1) & (2).

(X) The plaintiff should be assessed an initial partial appellate fee of \$ 11.00.

() The plaintiff is not assessed an initial partial appellate fee.

(X) Thereafter, the plaintiff should pay \$ 494.00, the balance of the \$505.00 filing fee, in periodic installments.

SO ORDERED, August 17, 2016.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE